

INDIAN HEALTH LEADERSHIP COUNCIL

Bethesda, Maryland
November 19, 2002

IHS FEDERAL STAFF MEETING

*Follow-up on issues from IHS Federal Staff Meeting
Building Better Relationships with Tribes
January 15-17, 2002
Las Vegas, NV*

MEETING OBJECTIVES

The IHS Federal Staff Meeting was co-sponsored by the Office of Tribal Self-Governance (OTSG) and the Office of Tribal Programs (OTP). This conference, being the first of its kind, invoked the participation of various IHS Headquarters and Area Office Staff, along with representatives from other government agencies who then attempted to address over fifty issues related to OTSG/OTP programs. The target audience of this meeting included, IHS staff, such as, Contract Proposal Liaison Officers (CPLOs), Agency Lead Negotiators (ALNs), Financial Management Officers (FMOs), and Senior Contracting Officers (SCOs), who have responsibility for tribal self-determination activities and have specific assigned duties for activities which support tribes.

The Planning Committee identified four objectives to establish a common theme throughout the meeting:

- Identify and discuss principal responsibilities for working relationships between Tribes and IHS;
- Discuss issues that are common to both the Title I and Title V processes;
- Promote dialogue, problem solving, communication and positive working relationships between the Area Offices and Headquarters Staff; and,
- Identify by consensus, consistent solutions to problems that support tribal sovereignty, promote self-determination for all tribes, and have a positive impact on the Agency's relationship with tribes.

PLANNING COMMITTEE

The Planning Committee consisted of sixteen members: 2 Co-Chairs, 1 OTSG representative, 1 OTP, 1 Division of Financial Management (DFM) representative, and 11 representatives from various Area Offices who have significant experience in the work-roles of the projected target audience.

IHS FEDERAL PLANNING COMMITTEE

Paula K. Williams, Director, Office of Tribal Self-Governance
Douglas P. Black, Director, Office of Tribal Programs

NAME	TITLE	AREA
CO-CHAIRS		
Jim Armbrust	Director, Office of Tribal Programs	Alaska Area Office
Terry Smith	Health System Specialist & Contract Proposal Liaison Officer (CPLO)	Portland Area Office
AREA REPRESENTATIVES		
Rick Sorensen	Director of Tribal Activities	Aberdeen Area Office
Tony Peterson	Area Executive Officer	Aberdeen Area Office
Anthony Yepa	Supervisory Public Health Advisor	Albuquerque Area Office
Nina McFadden	Self-Determination Coordinator	Bemidji Area Office
Garfield Littlelight	Health System Administrator	Billings Area Office
Marlene Hanify	Financial Management Officer	Billings Area Office
Dennis Heffington	ISDA Program Administrator	California Area Office
Ralph Ketcher	Contracting Officer	Nashville Area Office
Pete Hoskie	Director (Acting), Office of Tribal Affairs/CPLO	Navajo Area Office
Max Tahsuda	Director, Office of Tribal Self-Determination	Oklahoma City Area Office
Rusty Tahsuda	Health Systems Specialist	Phoenix Area Office
J. Mike Wood	Self-Governance Coordinator	Portland Area Office
Robert Price	Public Health Advisor	Tucson Area Office
HEADQUARTERS REPRESENTATIVES		
Rae Snyder	Director, Tribal Services Team	OD/OTP
P. Benjamin Smith	Self-Governance Specialist	OD/OTSG
Jean Ross	Budget & Accounting Analyst	OMS/DFM
Deloria Curfman	Systems Accountant	OMS/DFM
Sharon Folgar	Program Analyst	OD/OTP

MEETING OUTCOMES

Support for the type of meeting held in Las Vegas last January will depend on those who attended that meeting working on solutions to issues identified at the meeting. At the end

of three work days, the original list of over fifty items to be addressed had been reduced to thirteen. These parking lot issues were placed into three different categories for follow-up action: Issues that can be addressed within 30 days, Issues that can be addressed within 30-90 days, and Issues that need over 90 days to be addressed.

The Planning Committee conducted follow-up activity by reporting to the Indian Health Leadership Council (IHLC), the Executive Leadership Group (ELG), and IHS Headquarters and Area Office Staff. These efforts have enabled many of the parking lot items to resurface on the agendas of various workgroups (i.e, Business Plan Workgroup, IHS Restructuring Initiative Workgroup, etc) and national conferences where active tribal participation in conjunction with the participants of the IHS Federal Staff Meeting and Planning Committee assists timely and effective follow-up activity.

Though not all of the issues have been resolved, the IHS Federal Staff Meeting played an important role in defining the issues in such a way to appropriately assign follow-up action and activity. The collaboration and teamwork demonstrated during the IHS Federal Staff Meeting has strengthened communication and understanding of various topics, issues, and policies that by extension respect the government-to-government relationship between the Tribes and the U.S. Federal Government.

IDENTIFIED ISSUES

This section identifies Issues that are still being address as well as any follow-up action that has occurred.

GRANTS

Language to “add” grants to Funding Agreements (FA); Payment Management System (PMS) ready to pay lump-sum—How notified?

Background & Follow-up

The “approval” to pay lump sum grants through the PMS has been given and was discussed at a recent Financial Management Officer’s meeting. It was suggested that a clear, single page description on how to add grants to Compact Funding Agreements be developed. A decision memo on this subject had originally been rejected by Grants Management, however, they have since moved forward with implementation of the Title Vs including offering letter amendments to those Title V awardees whose FY 03 FA does not include language enabling lump sum payment and the other authorities in Title V.

In order for expansion and standardization to occur, full support from Headquarters is needed; otherwise, each Area Office will develop its own method. Headquarters has made progress on *Diabetes Lump Sum Payments* and the establishment of a Headquarters Audit Review Team (HART).

- ***Diabetes Lump Sum Payments***

Many FY 02 FAs included language stating the Secretary would add the Diabetes Grants to the FA after award. This would authorize lump sum payments, retention of earned interest to further the Diabetes program, FTCA coverage and would restrict tribes from reprogramming or redesigning the use of these funds.

The Division of Acquisitions and Grants Management (DAGM) issued a status report in November.

For those tribes with the Grant language in their FAs, the report shows “completed” as of 8/4/02 or 9/20/02. This is the date information was sent to the DHHS/Program Support Center (PSC). It is likely that PSC would then contact each tribe and ask the balance of unobligated funds that the tribe would want transferred to the lump sum account in PMS. After this occurs, the funds would be available to the tribe as lump sum.

For those tribes without Grant language in their FAs, DAGM indicated they faxed a letter to the tribes on November 2, 2002, asking if the tribes desired to add the Grant to their Self-Governance FA.

- ***Headquarters Audit Review Team (HART)***

The HART was established in April of 2002 to review non-Alaska self-governance audits and to issue findings and determinations on those audits.

The HART is comprised of:

Chairman, Deputy Director, Office of Management Support (OMS) (Phyllis Eddy)
Representative, OTSG (Kevin Quinn)
Representative, DFM (Dan Madrano)
Representative, Division of Regulatory and Legislative Affairs (Gerald Moss)
Representative, DAGM (Crystal Ferguson)
Support Staff/Organization (Vee Garcia) provided by OMS

To date, HART has finalized reviews of 14 years of audits for five tribal organizations, representing, according to Audit Resolution Advisory (ARA), 69 IHS findings and \$24,182,384 in IHS Questioned Costs.

HART is working with the Alaska Area Office as they set up their own HART-like team to resolve Alaska Self-Governance audits.

STREAMLINED AMENDMENT & PAYMENT PROCESS FOR TITLE I TRIBES

How and when will this be implemented?

Background & Follow-up

The Bemidji Area has been the alpha test site for implementing the streamlined process for Title I. The Billings Area is also using a streamlined process. In order for expansion and standardization to occur, full support of Headquarters and the Financial Management Officers is needed otherwise each Area may develop a process unique to their respective area.

Bemidji continues to use the system 100% for Title I Tribes. They have 2 '02 contracts entered and 24 '03s were effective 10/1/02. No further action has taken place.

BUYBACK MANAGEMENT PROCESS

This issue centers on the identification of Programs, Functions, Services, and Activities (PFSA) and full cost recovery.

Background & Follow-up

It was reported that Richard Grinnel, the Nashville Area Executive Officer, is working on this issue. One suggestion made for reducing the cumbersome and costly nature of the current process is to go to a continuing revolving account that does not need to be closed out at the end of each fiscal year. It was also reported that there is guidance on this issue in the form of a "FMO alert"¹ issued to the co-chairs of the planning committee. Identification of a common, legitimate process can be worked on during monthly FMO conference calls.

This item continues to be discussed during FMO conference calls

FUNDING TRANSITIONS

This issue encompasses concerns related to reporting and compliance of funding transitions: FY to CY or CY to FY.

Background & Follow-up

This issue seems to be one of concern to Areas, mostly to two Areas, Phoenix and Nashville. The Act requires a report to Congress on those tribes that need to be funded on a split year so that funding can be secured to fund them for a Calendar Year with a single year appropriation.

CONTRACT SUPPORT SERVICES (CSC) AND CONSTRUCTION

The current policy needs refinement.

Background and Follow-up

At the January 2002 meeting, Bruce Chelikowski (Office of Environmental Health and Engineering (OEHE)) promised that this clarifying policy would be released soon. OEHE presented at the Fall (2001) Joint DHHS/DOI/Tribal Leaders Fall Self-Governance Conference regarding this subject. Action will be taken accordingly between

¹ See December 16, 1998 FMO Alert: FY 1999 Obligation of Contracts/Compacts

OEHE and the Office of the Director (OD). Mr. Chelikowski reinforced his commitment to provide policy clarification during the November 2002 IHLC.

USE OF PRIOR YEAR FUNDS

Report on Prior Year Funds initiative was taken on by Duane Jeannotte and the Division of Financial Management (DFM) as a management and monitoring tool. [Mr. Jeannotte & Mr. Lovell Harper are the contact persons.] It seems that this issue is close to closure understanding that there are existing policy and regulation available to FMOs; this needs to now be clearly identified..

Background and Follow-up

(Needs to be added)

REDESIGN

Develop criteria for determining if redesign applies.

Background and Follow-up

Area Offices have requested that criteria be developed to outline how a tribe may redesign a program that was previously provided by the IHS. It was noted that the Office of General Counsel (OGC) may need to be involved with this issue.

RESOURCING NEWLY RECOGNIZED TRIBES

Background and Follow-up

IHS Headquarters and some Area Offices representatives met in June 2002 as a follow-up to the January 2002 IHS Federal Staff Meeting. From this meeting, an action will be pushed forward recommending that a different funding formula (based on Federal Disparity Index) be used to fund new tribes. This funding formula for resourcing newly recognized tribes policy will then need to be sent out for tribal consultation. Originally, it was felt that this was also going to be part of the Contract Health Services (CHS) workgroup's consideration, however, since there will be no CHS workgroup, a Dear Tribal Leader Letter (DTLL) is forthcoming; this DTLL will introduce the new formula and ask the Areas to conduct consultation.

SINGLE AUDITS

Chapter 17 of the *DOI/HHS Internal Agency Procedures Handbook (IAP)* has triggered various comments and concern. This issue deals with the possibility of clarifying, updating, and/or training with respect to this chapter.

Background and Follow-up

A number of comments were made during the June 27, 2002, Planning Committee follow-up conference call. They included comments that both the Senior Contracting Officers and Finance Management Officers are discussing audit requirements and the roles of various offices and individuals in IHS with respect to dealing with or resolving reportable audit conditions. There is still some concern regarding the clarity of Chapter

17 of the IAP, some maintaining that the chapter needs editing and updating and if so exactly what needs to be updated or edited. There was also brief mention made of the HART that was recently established for Title V Compacts and FAs.

IHS HEADQUARTERS TRIBAL SHARES (TSA)

This issues centers on recalculations of TSA.

Background and Follow-up

There was not a recalculation made for FY 2003. It was reported that Headquarters was looking into new user population and the impact of using the new user population on tribal size adjustment tribal shares.

HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT (HIPAA)

Tribal compliance concerns: Does HIPAA apply to tribes?

Background and Follow-up

Applicability of HIPAA to tribes is not altogether clear. HIPAA contains several really good provisions for patients. Several tribes have already decided that it is in the best interests of their patients to comply with HIPAA. However, it becomes unclear when we look at it as whether tribes are required to comply, or whether they can instead choose whether to comply. We currently have no official position from the IHS on HIPAA's applicability to tribes and neither Congress nor the DHHS has made it clear.

There was a suggestion made to involve Dr. Bob Harry in concerns related to tribal compliance. It was also pointed out that the IHS is not really offering required policies or procedures to tribes but is providing models or ideas for tribal compliance.

The Joint DHHS/DOI/Tribal Leaders Fall Self-Governance Conference in San Diego held a break-out session on HIPAA. Dr. Harry was the presenter. His presentation was informative but spoke more towards HIPAA in a broad perspective. He did not mention applicability to Tribes, nor did he acknowledge a position from IHS. The Tribal Self-Governance Advisory Committee (TSGAC) has submitted a letter to Dr. Grim expressing their concerns and addressing their unanswered questions in regards to HIPAA. The IHS HIPAA team is lead by Dr. Harry who may be reached at 301.443.7261 or Captain Nick Provost at 301.443.1680.

In regards to third party collections, after speaking with a few people from DRLA, it looks like it will be difficult to collect from Medicare, Medicaid and private insurance if a tribal provider is not HIPAA compliant. Richard Price can be contacted (301.443.1116) to discuss this issue in greater detail.

BENEFICIARY ACCESS & ELIGIBILITY

Background and Follow-up

Open Door Policy—The Code of Federal Regulations defines who is eligible to receive the health care services provided by IHS. The IHS interprets the regulations in a broad way. The IHS policy provides that any person who is a federally recognized tribal member or descendent who presents him/herself at an IHS facility or a facility operated under a tribal Title I Self-Determination contract or a Title V compact shall have access to health care services. Some tribes have adopted the same broad interpretation as the IHS. On the other hand, those tribes not sharing the IHS interpretation of the regulations would like to see this matter addressed jointly by the agency and tribes.

This has been discussed in various meetings (IHS Restructuring Initiative Workgroup (RIW), the Business Plan Workgroup (BPWG), and at the Self-Governance Conferences). Recommendations have been forwarded to the Director, IHS, for action on this concern.

The Regional Attorneys meeting that was convened in San Diego (November 6, 2002) discussed this issue. It was their finding that the regional offices had issued opinions interpreting the eligibility that needed further review by Mr. Duke McCloud, who rescinded the opinion. It was determined that this issue is more of a policy issue that needs to be addressed by the Agency in order to be developed in such a way that there is consistency among Areas.

Dr. Grim recently attended a Bemidji I/T/U Meeting and committed to have on-going dialogue with Tribes regarding this issue.

INDIAN SELF-DETERMINATION (ISD) NEGOTIATIONS

Decentralization

Background and Follow-up

Working through the IHS/Tribal CSC workgroup, CSC standards will be completed before the end of this calendar year. Upon completion of standards, a recommendation to the Director, IHS, will be made, recommending that he give the Areas full authority to negotiate and approve CSC requests on a pilot basis beginning this year (FY 2003). An evaluation will be conducted by OTP, and it is expected that a permanent policy change will be made in FY 2005 to institutionalize permanent authority at the Areas for this responsibility.